

YALE LAW JOURNAL

Vol. XXVI

MARCH, 1917

No. 5

INTERNATIONAL PECUNIARY CLAIMS AGAINST MEXICO

The Claims Commission which will ultimately be established to adjudicate upon claims of citizens of the United States and other countries against Mexico will have to decide some of the most interesting and practical questions of international law. Not the least important of these are the fundamental questions of the liability of the Carranza government for its own acts while a revolutionary faction (the Constitutionalists) and for those of the Huerta government it has displaced. An examination of these questions in the light of international law and precedents may not prove without interest.

Assuming that the Carranza government will maintain itself as the regularly constituted government of Mexico and its responsible representative before the Commission, the first factor of consequence to be considered is that it has arisen out of a successful revolution. While it is a general principle that a state or nation is not responsible for the acts of unsuccessful revolutionists beyond its control, the rule in the case of successful revolutionists is quite different. The government created through its efforts is liable for the acts of the revolutionists as well as for those of the titular government it has displaced.¹ Its acts are considered as at least those of a general *de facto* government² for which the state is liable from the beginning of the revolu-

¹ *Bolivar Railway Company (Gt. Brit.) v. Venezuela* (Feb. 17, 1903) Ralston, *Venezuelan Arbitrations of 1903*, p. 394.

² *Dix (U. S.) v. Venezuela* (Feb. 17, 1903) Ralston, 7; *Heny (U. S.) v. Venezuela*, *ibid.*, 14, 22.

tion, on the theory that the revolution represented *ab initio* a changing national will crystallizing in the final successful result.³ Thus, the government created through a successful revolution becomes liable for all services rendered to the revolution.⁴ The unlawful acts of successful revolutionists render the government equally liable.⁵ Moreover, the successful revolutionists appear to be bound from the beginning of the revolution by the stipulations of national treaties, for the violation of which they will be held liable as successors of the titular government.⁶

DE FACTO GOVERNMENTS AS AUTHORITIES BINDING THE NATION

As will be observed presently, a distinction is made between a general *de facto* government exercising control over the whole or practically the whole nation and a local *de facto* government exercising control within a part of the nation only. The government of Huerta began its rule at least as a general *de facto* government, if not the constituted government of Mexico, although its control was gradually diminished by the increasing strength and spread of the Constitutionalists. It has been contended that Huerta's assumption of power in Mexico City was in accordance with the constitutional forms prescribed by the Mexican Constitution. If that is so, his acts from the beginning to the end of his "dictatorship" bind the nation. On the other hand, if he may not be considered to have represented the constituted government, he did in the beginning, it is believed, actually exercise control over practically the whole nation, and his government, therefore, may be considered a general *de facto*

³ *Bolivar Railway Co. v. Venezuela*, *supra*; *Williams v. Bruffy* (1878) 96 U. S. 176.

⁴ *Oteri Claim v. Honduras*, For. Rel. 1899, 352 (use of steamer); *Kummerow (Germany) v. Venezuela* (Feb. 13, 1903) Ralston, 561; *Redler (Germany) v. Venezuela*, *ibid.*, 560; *Baasch and Römer (Netherlands) v. Venezuela* (Feb. 28, 1903) *ibid.*, 907. But in one case such a successful revolutionist government was considered by Secretary Blaine as not liable for military services rendered to the legitimate government in suppression of the very revolution which ultimately became successful. Mr. Blaine, Secretary of State, to Mr. Patterson (Apr. 7, 1890) 6 Moore, Dig. 624.

⁵ *Hill (U. S.) v. Peru* (Dec. 4, 1868) Moore, Arb. 1665; *Hughes (U. S.) v. Mexico* (Mar. 3, 1849) Moore, Arb. 2972; *Fowks v. Peru*, For. Rel. 1901, 430-434; *MacCord v. Peru* (May 17, 1898) 6 Moore, Dig. 985-990. (These were cases of personal injury and unlawful imprisonment.)

⁶ *Fowks Claim v. Peru*, *supra*.

government. In this event also his acts bind the state. If, however, the Huerta government is considered merely as having exercised control from the beginning within only a portion of Mexico—no definition has apparently been attempted as to how great a portion of the territory must be controlled by a government in order that it may be considered a general *de facto* government—and contending for control against a legitimate government, it may be that under the general rules governing local *de facto* governments an attempt might be made by Mexico to reject liability for the acts of the Huerta government.

As against governments that recognized Huerta's as the legitimate government of Mexico, it is very probable that Carranza's government will be compelled to assume liability for the acts of the Huerta government. As against governments which declined to recognize Huerta, such as the United States, Carranza may attempt to reject any liability on the ground that as a local *de facto* government, Huerta's government could not bind the Mexican nation. This phase of the case will be examined presently. It is believed, however, that Huerta's government was at all times more than a local *de facto* government and was, in fact, either the constituted government or at least a general *de facto* government, in either of which events the Mexican nation becomes liable for the acts of the Huerta government.

Inasmuch as the question will undoubtedly arise as to the legal nature of the Huerta government and of the liability of Mexico for its acts, the following considerations on the question of *de facto* governments are submitted.

The internal political changes which a state may undergo do not affect its international personality. In the rapid change of government to which some states have been subject, certain parties have secured control and exercised the powers of government without compliance with constitutional or strictly regular forms. This control may extend over the entire nation or over certain parts only. It becomes important then to determine when such control of the administration may be said to have become a *de facto* government, and to what extent the acts of such a provisional government are binding upon the nation.⁷

⁷ Rougier, A., *Les guerres civiles et le droit des gens* (Paris, 1903) pp. 481 ff; Wiese, C., *Le droit international appliqué aux guerres civiles* (Lausanne, 1898) pp. 235 ff. If the *de jure* successor of such a *de facto* government is the government it has itself displaced, it is then known as

It is necessary, first, to distinguish between the powers of a *de facto* government which has displaced the *de jure* government within the whole or practically the whole nation, as, *e. g.*, the government of Cromwell, of Napoleon I, and of the Republic of 1848 in France, and a *de facto* government which controls only a limited portion of the national territory, as the Confederate government did in the United States. The former may be called a "general" *de facto* government, which resembles closely a lawful government, and the latter, a "local" *de facto* government or faction. The legal consequences of this distinction are important.⁸

A general government *de facto*, having completely taken the place of the regularly constituted authorities in the state, binds the nation. So far as its international obligations are concerned, it represents the state. It succeeds to the debts of the regular government it has displaced, and transmits its own obligations to succeeding titular governments.⁹ Its loans and contracts bind the state, and the state is responsible for the governmental acts of the *de facto* authorities. In general, its treaties are valid obligations of the state. It may alienate the national territory, and the judgments of its courts are admitted to be effective after its authority has ceased. An exception to these rules has occasionally been noted in the practice of some of the states of Latin-America, which declare null and void the acts of a usurping *de facto* intermediary government when the regular government it has displaced succeeds in restoring its control.¹⁰ Nevertheless,

the "intermediary" government. 1 Moore, Dig. 41 ff. Ralston, *International Arbitral Law*, secs. 430, 448-456; Gaudu, Raymond, *Essai sur la légitimité des gouvernements dans ses rapports avec les gouvernements de fait* (Paris, 1914).

⁸ *Williams v. Bruffy* (1878) 96 U. S. 176, 186.

⁹ *The Neapolitan Indemnity* (Oct. 14, 1832) Moore, Arb. 4575-4589 (Two Sicilies admitted liability for acts of Murat's government). Treaty of July 4, 1831, between U. S. and France admitted liability of France for acts committed during the Empire. See Wiese, *op. cit.*, 246; *Miller (U. S.) v. Mexico* (July 4, 1868) Moore, Arb. 2974; *Republic of Peru v. Dreyfus* (1888) 38 Ch. Div. 348, and particularly decision of Franco-Chilean Tribunal of Arbitration in Lausanne, in *Claim of Dreyfus Bros.*, Descamps and Renault, Recueil int. 1901, 396-398.

¹⁰ Wiese, *op. cit.*, 244 ff. Limitations of space prevent any detailed discussion of the various kinds of governmental acts which survive the downfall of a usurping *de facto* government. This is largely a question of constitutional law. Pradier-Fodéré, Vol. I, sec. 134.

acts validly undertaken in the name of the state and having an international character cannot lightly be repudiated and foreign governments generally insist on their binding force.¹¹ The legality or constitutional legitimacy of a *de facto* government is without importance internationally in so far as the matter of representing the state is concerned.¹²

The responsibility of the state for the acts of a local *de facto* government involves more delicate questions. Such a local government *de facto* may be maintained by military force within a portion of a larger territory, either as an enemy making war against the invaded nation—a military occupant—or as a revolutionary organization resisting the authority of the legitimate government or of other factions contending for national control. The power of such a *de facto* government to involve the responsibility of the state depends largely upon its ultimate success, so that most of its international acts, *e. g.*, treaties, etc., are affected with a suspensive condition. Nevertheless, even if it fails, definite executed results follow from its merely temporary possession of administrative control within a defined area. These may be considered briefly.

A temporary occupant or local *de facto* government carries on the functions of government, supported usually directly or indirectly by military force.¹³ It may appoint all necessary officers and designate their powers, may prescribe the revenues to be paid and collect them, and may administer justice.¹⁴ Foreigners must perforce submit to the power which thus exercises jurisdiction, and a subsequent *de jure* government cannot expose them to penalties for acts which were lawful and enforced by

¹¹ Thus, Peru, notwithstanding art. 10 of its Constitution and its law of 1886, declaring void the acts of the usurper Pierola, was held responsible for contracts which he had made. *Dreyfus (France) v. Chile* (July 23, 1892, award July 5, 1901) Descamps and Renault, *Recueil int.* 1901, 396.

¹² Bluntschli, secs. 44, 45, 120; Holtzendorff, Vol. II, sec. 21; Pradier-Fodéré, secs. 134, 149; Rivier, Vol. II, pp. 113, 440; Rougier, pp. 481; *Dreyfus (France) v. Chile*, Franco-Chilean Arbitration (Lausanne) p. 290, and authorities there cited; Gaudu, *op. cit.*

¹³ 1 Moore, Dig. 45 ff; 7 *ibid.*, 257 ff; 2 Op. Atty. Gen. 321; 9 *ibid.*, 140; Magoon, Rep. 11 ff; Hall, Part 3, chap. iv; Oppenheim, p. 204 ff; Bordwell, P., *Law of war* (Chicago, 1908) chaps. viii and ix; Spaight, J. M., *War rights on land* (London, 1911) chaps. xi and xii.

¹⁴ The German legislation for the occupied territories of Belgium is being collected and edited by C. H. Huberich and A. Nicol-Speyer (The Hague, Nijhoff, 1915—).

the *de facto* government when done. The temporary *de facto* government may legislate on all matters of local concern, and in so far as such legislation is not hostile to the subsequent *de jure* government which displaces it, its laws will be upheld.¹⁵ A military occupant as a general rule may not vary or suspend laws affecting property and private personal relations or those which regulate the moral interests of the community. If he does, his acts in so doing cease to have legal effect when the occupation ceases. Political and administrative laws are subject to suspension or modification in case of necessity.¹⁶

The collection of taxes and customs duties within the territory and during the period of occupancy of the local *de facto* government relieves merchants and tax-payers from a subsequent second payment upon the same goods to the succeeding *de jure* government.¹⁷ Such a temporary government may levy contributions on the inhabitants for the purposes of carrying on the war, but they must not savor of confiscation. It may seize property belonging to the state and may use it. It may receive money due the state and give receipts in the name of the state.¹⁸ This, however, applies only to debts payable within the territory and period of occupancy.

Debts due by the state cannot be confiscated or the interest sequestered by a temporary occupant,¹⁹ and private property must be respected. The occupant or local *de facto* government cannot alienate any portion of the public domain.²⁰ The fruits thereof may be sold, but only that part accruing during the period of occupancy.²¹ A local *de facto* government may become the

¹⁵ *Bruffy v. Williams* (1878) 96 U. S. 176, 185; *U. S. v. Home Ins. Co.* (1874) 22 Wall. (U. S.) 99; *Sprott v. U. S.* (1874) 20 Wall. (U. S.) 459, 464. But the *de jure* government which ousts a usurping *de facto* government (*e. g.*, The Confederates) may disregard all its acts which contributed to its support, except that it cannot collect taxes and duties a second time.

¹⁶ Hall, pp. 475-476.

¹⁷ *U. S. v. Rice* (1819) 4 Wheat. (U. S.) 246; *Mazatlan and Bluefields* cases, 1 Moore, Dig. 49 ff; Cases in U. S. Civil War and in Colombia, 6 *ibid.*, 995-996; Message of the President, For. Rel. 1900, xxiv; *MacLeod v. U. S.* (1913) 229 U. S. 416, 429.

¹⁸ Magoon, Rep. 261, citing Phillimore and Halleck.

¹⁹ 7 Moore, Dig. 306 and authorities cited in note, p. 308.

²⁰ *Coffee v. Groover* (1887) 123 U. S. 1; *Georgiana and Lizzie Thompson (U. S.) v. Peru* (1867) Moore, Arb. 1595, 4785; *Munford v. Wardwell* (1867) 6 Wall. (U. S.) 423, 425.

²¹ *Georgiana and Lizzie Thompson claim (U. S.) v. Peru, supra.* Art.

owner of movables, which it may sell and hypothecate. A succeeding government takes such mortgaged property as rightful owner subject to the liens thus created in good faith.²² As a general rule, however, a succeeding *de jure* government is not liable for debts contracted by a displaced local *de facto* government.²³ A person dealing with a local *de facto* government assumes the risk of his enterprise. The *de facto* government may issue paper money, and private contracts stipulating for payment in such money will be enforced in the courts of the succeeding *de jure* government.²⁴ Under compulsion, a government has at times admitted liability for the wrongful acts of previous local *de facto* governments.²⁵

Having in a general way described the difference between a general and a local *de facto* government and their power to transmit responsibility, it is now necessary to examine the criteria of a *de facto* government, and the legal results of one of them in particular, namely, recognition by the claimant's own government.

The existence of a *de facto* government is a question of fact. Tests in establishment of this fact are the possession of supreme power in the district or country over which its jurisdiction extends,²⁶ the acknowledgment of its authority by the people or

55 of the Hague Regulations provides that a military occupant shall be regarded as the administrator and usufructuary of the public buildings of the State. See Maccas, *Salonique occupée et administrée par les Grecs* (1913) 20 REV. GÉN. DE DROIT INT. PUB. p. 207.

²² *U. S. v. Prioleau* (1865) 35 L. J. (Ch.) 7; *U. S. v. McRae* (1869) L. R. 8 Eq. 69; *Hallet v. The King of Spain* (1828) 1 Dow and Cl. 169; *The King of the Two Sicilies v. Wilcox* (1850) 1 Sim. N. S. 332. But see *Barrett (Gt. Brit.) v. U. S.* (May 8, 1871) Hale, Rep. 153, Moore, Arb. 2900, where it was held that Confederate cotton, seized by the U. S., was not subject to a lien created by contract between claimant and the Confederate states.

²³ Dom Miguel loan of 1832 was not binding on Portugal. Rougier, p. 523.

²⁴ *Thorington v. Smith* (1868) 8 Wall. (U. S.) 1, 9 (Contract made on a sale of property and not in aid of the rebellion); *Hanauer v. Woodruff* (1872) 15 Wall. (U. S.) 439, 448. As to the general effect of the acts of the Confederate government, see *Baldy v. Hunter* (1897) 171 U. S. 388, 400.

²⁵ *E. g.*, Lord J. Russell made his recognition of the Jaurez government in Mexico conditional upon the admission of responsibility for the acts of the Miramon and Zuloaga governments. Lord J. Russell to Sir C. Wyke, March 30, 1861, 52 St. Pap. 237, Moore, Arb. 2906.

²⁶ *Mauran v. Insurance Co.* (1867) 6 Wall. (U. S.) 1; *Nesbitt v. Lushington* (1892) 4 Term. 763.

the bulk of them by their rendering it habitual obedience "from fear or favor,"²⁷ and finally, the recognition of the government as *de facto* by foreign governments.²⁸ While each of these tests is persuasive, none of them alone is conclusive, except as recognition or failure to recognize by the claimant's own state may operate as an estoppel.

In municipal courts, recognition by the political department of the government is essential to judicial notice of the *de facto* character of a foreign provisional government.²⁹ In one case at least, it has been held that such act or failure to act by the government was not binding on an international tribunal.³⁰ The burden of proving that a particular government is a government *de facto* rendering the nation responsible falls upon the claimant.³¹ It has been held in several cases that recognition, while important as evidence, does not create a *de facto* government,³² nor is such recognition conclusive of its existence in fact. The failure of the United States, however, to recognize certain foreign governments as *de facto*, has been held binding upon its own citizens and to estop them from asserting rights based upon the *de facto* character of the government in question.³³ It is,

²⁷ Opinion of Wadsworth, Commissioner, in *McKenny (U. S.) v. Mexico* (July 4, 1868) Moore, Arb. 2882. But a local *de facto* government generally controls by force and not favor. See also *U. S. v. Rice* (1819) 4 Wheat. (U. S.) 253 and citations from Austin and Halleck in the case of *Day and Garrison (U. S.) v. Venezuela* (Dec. 5, 1885) Moore, Arb. 3553-3554 and *Henriquez (Netherlands) v. Venezuela* (Feb. 28, 1903) Ralston, 899. See also *Janson (sic in original) v. Mexico* (July 4, 1868) Moore, Arb. 2902, 2930 and *dictum* by Wadsworth in *Cucullu (U. S.) v. Mexico, ibid.*, 2877.

²⁸ *Thorington v. Smith* (1868) 8 Wall. (U. S.) 1, 9.

²⁹ *City of Berne v. Bank of England* (1804) 9 Ves. 347; *The Manilla* (1812) 1 Edw. Adm. 1; *Rose v. Himely* (1808) 4 Cranch (U. S.) 241; *Gelston v. Hoyt* (1818) 3 Wheat. (U. S.) 246, 324; *U. S. v. Palmer* (1818) 3 Wheat. (U. S.) 644.

³⁰ *Jarvis (U. S.) v. Venezuela* (Feb. 17, 1903) Ralston, 150. See also *Day and Garrison (U. S.) v. Venezuela* (Dec. 5, 1885) Moore, Arb. 3560 (although it was considered an important element in arriving at the fact).

³¹ *Day and Garrison (U. S.) v. Venezuela, supra*.

³² *Cucullu (U. S.) v. Mexico* (July 4, 1868) Moore, Arb. 2873, 2877; *McKenny (U. S.) v. Mexico, ibid.*, 2883 (Recognition of Zuloaga government in Mexico by U. S. Minister and other foreign ministers held not to establish its *de facto* character as a fact); *Jarvis (U. S.) v. Venezuela* (Feb. 17, 1903) Ralston, 150.

³³ *Jarvis (U. S.) v. Venezuela* (Feb. 17, 1903) Ralston, 150 (The Paez government in Venezuela); *Janson (U. S.) v. Mexico* (July 4, 1868)

of course, an established principle of international law that the recognition of the belligerent character of a revolutionary movement releases the legitimate government from liability to the citizens of the recognizing power for the belligerent acts of the revolutionists, assuming that they are ultimately defeated. While international commissions have held almost uniformly that only a general *de facto* government can involve the responsibility of the state,³⁴ it was held in one case,³⁵ which has been sharply criticized,³⁶ that the state was responsible for the wrongful acts of a local *de facto* government.

EFFECT OF CARRANZA'S ALLEGED DECLARATION THAT THE CONSTITUTIONALISTS WOULD NOT RECOGNIZE THE DEBTS
CONTRACTED BY HUERTA

Newspaper reports have stated that Carranza has declared that his government would not recognize the debts and obligations incurred by Huerta. It is not believed that such a declaration affects in any way the international liability of Mexico, under the principles set forth above, for the obligations incurred by the Huerta government. It is an established principle of inter-

Moore, Arb. 2902 (The Maximilian government in Mexico); *Schultz (U. S.) v. Mexico* (July 4, 1868) *ibid.*, 2973 (Recognition of Juarez government by the United States estopped claimant from establishing that the Miramon government was the *de facto* government of Mexico).

³⁴ *Day and Garrison (U. S.) v. Venezuela* (Dec. 5, 1885) Moore, Arb. 3548, 3553 *dictum*; *Henriques (Netherlands) v. Venezuela* (Feb. 28, 1903) Ralston, 899.

The acts of a local *de facto* government were held not to bind the State in *Georgiana and Lizzie Thompson (U. S.) v. Peru*, *supra*, and in the Dom Miguel loan.

Again, *e. g.*, Mexico was held not responsible for the acts of the Maximilian government: *Janson (U. S.) v. Mexico* (July 4, 1868) Moore, Arb. 2902; *Stückle, ibid.*, 2935; *Baxter, ibid.*, 2934. Nor for those of the Zuloaga and Miramon governments: *Cucullu, ibid.*, 2873; *McKenney, ibid.*, 2881 and cases cited, p. 2885. Nor the U. S. for acts of the Confederate states: *Prats (Mexico) v. U. S.*, *ibid.*, 2886.

³⁵ *Baldwin (U. S.) v. Mexico* (April 11, 1839) Moore, Arb. 2859-2866, where the wrongful acts of a "junta" established for six months in a state of Mexico were held to render Mexico responsible. See also *Central and South American Telegraph Co. (U. S.) v. Chile* (Aug. 7, 1892) Moore, Arb. 2938, 2942, where local *de facto* government was held entitled to take advantage of a concession permitting the "government" to suspend a cable service.

³⁶ Lapradelle and Politis, *Recueil des arbitrages*, Vol. I, pp. 466-467.

national law that acts of municipal legislation cannot alter the international obligations of the state.³⁷ If an act of municipal legislation cannot alter the international obligations of the state, it would seem that the mere declaration of the chief of a revolutionary faction, whether ultimately successful or not, could hardly affect the international obligations of the state.

A question has also been raised as to whether an alleged declaration attributed to the President of the United States to the effect that "he will not recognize as legal or binding anything done by Huerta since he became Dictator," *i. e.*, subsequent to Huerta's dissolution of the Mexican Congress and the arrest of certain deputies, October 10, 1913, has any effect upon the international obligations of Mexico, or operates as an estoppel upon citizens of the United States to whom Huerta incurred obligations subsequent to October 10, 1913. As against foreign governments, it would seem that the alleged statement of the President does not alter the obligations of the Mexican nation under the general principles of international law. As regards citizens of the United States having claims against Mexico, it does not seem that the Mexican government can avail itself of any such declaration to escape obligations properly incurred and due by the nation or its authorities under the recognized principles of international law. In other words, the declaration is without legal effect except in so far as the Department of State, in the exercise of its discretion as the prosecutor of the claims of American citizens, may determine not to espouse claims of the character described. As such a position would be politically unwise and legally and morally unjust, it is hardly likely that it will be taken. Claimants, therefore, may with some degree of certainty ascertain the legal validity of their claims by an examination of the law of international claims as laid down by numerous mixed claims commissions, the decision of municipal courts, the rulings of Secretaries of State and Ministers of Foreign Affairs, and the opinions of international lawyers.

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³⁷ Mr. Fish, Sec'y of State, to Mr. Foster, July 15, 1875, 6 Moore, Dig. 310; see Sec'y Bayard's statement with reference to the Venezuelan law of February 14, 1873, 6 Moore, Dig. 745; see also For. Rel. 1887, 99; 1888, 491; and 1893, 731-732.